

UNITED STATES DISTRICT COURT

for the
District of Oregon



Bullseye Glass Co.

Plaintiff

v.

Governor Kate Brown et al.

Defendant

Civil Action No. 3:17-cv-1970-JR

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Region 10 Administrator
Environmental Protection Agency

(Name of person to whom this subpoena is directed)

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: As described in the attached Exhibit A.

Place: GRM Law Group 5285 Meadows Rd., Suite 330, Lake Oswego, OR 97035	Date and Time: 03/18/2019 9:00 am
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☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 02/18/2019

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Carrie Menikoff

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Bullseye Glass Co. Plaintiff, who issues or requests this subpoena, are: Carrie Menikoff, 5285 Meadows Rd. Ste. 330, Lake Oswego, OR 97035, Carrie@grmlawgroup.com, and 503-703-5001.

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A
DEFINITIONS

The following definitions will apply to this Request:

1. If any term is not specifically defined herein, the term should be defined using Webster's Dictionary and/or Black's Law Dictionary and/or using its common context.
2. The words "YOU" and "YOUR" means the Environmental Protection Agency ("EPA"), along with any of its present and former agents, present and former employees, and all other persons acting or purporting to act on behalf of the EPA.
3. The word "PLAINTIFF" means Bullseye Glass Co., an Oregon Corporation, and the Plaintiff in the case, *Bullseye Glass Co. v. Brown Et al.*, United States District Court for the District of Oregon Case No. 3:17-cv-1970-JR.
4. The word "DOCUMENT" means any written record, recorded (in any medium, including electronically) or photographic matter, whether produced, reproduced, or stored on paper, cards, tapes, film, videotape, audiotape, computer discs or drives, diskettes, compact discs, electronic facsimiles, computer devices, or on any other media and in any form, including magnetic, optical and digital, and includes, but is not limited to, originals, copies (with or without notes or changes thereon), drafts and documents that have been logically deleted but not physically erased. The word "document" also includes, but is not limited to, papers, books, letters, photographs, objects, tangible things, correspondence, telegrams, cables, telex messages, electronic mail (also known as "e-mail"), voicemail, short message service, memoranda, notes, notations, work papers, transcripts, minutes, reports, recordings of conversations or of interviews or of conferences or other meetings, affidavits, statements, summaries, opinions, reports, records, studies, analyses, evaluations, estimates, proposals, budgets, data, projections, charts, diagrams, schedules, specifications, maps, flow sheets, spreadsheets, certifications, organizational charts, contracts, agreements, leases, journals, statistical records, desk calendars, appointment books, diaries, lists, tabulations, sound recordings, computer printouts, data processing input and output, microfilms, and all other records kept by electronic, optical, magnetic, photographic or

mechanical means, and things similar to any of the foregoing, however denominated. Each draft or version of each document is included within the definition, as are all attachments, exhibits, and enclosures included within all such drafts or versions, and archival copies of magnetically, optically, or electronically stored and/or recorded documents.

5. The word **"FILE"** means a group of documents that have been collected, organized, assembled, or stored together. Examples of a "File" include, but are not limited to, official company files and/or government files, unofficial files kept anywhere by YOUR employees, desk files, private files, files kept on computers, and files kept in file cabinets or desk drawers.

6. The words **"PERSON"** or **"PERSONS"** include individuals, corporations, associations, firms, partnerships, joint stock companies, and governmental bodies.

7. The words **"RELATING TO"** mean constituting or directly or indirectly regarding, reflecting, concerning, referring to, responding to, in connection with, the result of, announcing, explaining, showing, discussing or analyzing.

8. The word **"PROPERTY"** refers to the Plaintiff's real property located at 3722 SE 21st Ave., Portland, OR 97202, including but not limited to the facility that is the subject of Oregon Air Containment Discharge Permit Number 26-3135 and lots across the street that are used by the Plaintiff for storage or other purposes.

9. The word **"6S"** refers to 40 CFR 63.1148 (Subpart SSSSSS).

INSTRUCTIONS

Produce all documents or any parts or segments thereof which are in your possession or subject to your possession, custody, control, or access. If a document is found in a file, produce the whole file with the document and do not remove or reposition the documents. If there is any document that you fail to produce, please state the location and address where such document can be found, the name of the person who possesses such document, when such document left your possession, and the reasons why you cannot produce such document. If there is any potential source of, or repository for, documents specified herein that you have not searched

(such as an attorneys or accountants office, a file storage facility or an old computer drive or back-up tape system), please identify and specify the limitations on your search.

All documents that are normally maintained or stored electronically are to be produced in their native format.

Unless expressly stated otherwise, these requests exclude information companies submitted to EPA under the designation of confidential business information.

These requests specifically exclude the unredacted documents already produced in response to Freedom of Information Request EPA-R10-2018-004591. To the extent documents produced in response to EPA-R10-2018-004591 were partially redacted or withheld, and should the EPA redact or withhold documents responsive to this subpoena, the EPA should produce a privilege log.

The period of time for which documents are requested, unless otherwise stated, extends from February 01, 2016 to June 30, 2016.

DOCUMENTS

REQUEST NO. 1: Produce all documents and communications relating to YOUR file on the Plaintiff from the file's creation to present. This request specifically includes any documents stored on Sharepoint and/or OneDrive.

REQUEST NO. 2: Produce all documents and communications between YOU and the Oregon Department of Environmental Quality ("DEQ"), relating to the Plaintiff and 6S.

REQUEST NO. 3: To the extent not already produced in response to another request, produce all YOUR documents and communications, including YOUR internal communications, relating to the application and/or potential application of 6S to the Plaintiff by YOU and/or the DEQ from 2007 to present including but not limited to:

- DEQ's March 9, 2016 letter to the YOU regarding the Plaintiff

- YOUR April 12, 2016 letter to DEQ providing a non-binding regulatory interpretation that DEQ had discretion to apply 6S to the Plaintiff
- Any communication between YOU and the Oregon Governor's Office ("Governor's Office") relating to 6S
- Any communication between YOU and any member of the Oregon congressional delegation relating to 6S and their staff

REQUEST NO. 4: To the extent not otherwise already produced in response to a another request, produce all documents and communications between YOU and any email addresses ending in .or.us relating to the Plaintiff and 6S.

REQUEST NO. 5: To the extent not already produced in response to Request No. 1, produce all YOUR documents and communications relating to 6S and colored art glass manufacturers, including the Plaintiff, from YOUR current and/or former employees/officials:

- Katie McClintock
- Madonna Narvaez
- Paul Koprowski
- Zach Hedgepeth
- Dennis McLerran
- Julie Wroble
- Marianne Holsman
- Kirstin Leefers
- Judy Smith
- Robert Elleman
- Dave Bray
- Janis Hastings
- Anthony Barber
- Julie Matthews

- Edward Kowalski
- Julie Vergeront
- Susan Fairchild
- Alison Davis
- Richard A. “Chet” Wayland
- David Shelow
- Steffan Johnson
- Matthew Landis
- Mike Koerber
- Sara Terry
- Keith Barnett
- Scott Throwe
- Patrick Yellin
- John Averbach
- Sonja Rodman
- Matthew Davis
- Janet McCabe
- Edward Messina
- Brian Doster

REQUEST NO. 6: Produce all YOUR documents and communications relating to 6S and the following companies:

- Youghioghenny Glass
- Blenko Glass
- Wissenmach Glass
- Fenton Glass
- Armstrong Glass

- Parramore Glass
- Origin Glass
- Franklin Art Glass
- Kokomo Glass
- Pacific Art Glass
- Uroboros Glass
- Spectrum Glass
- System 96
- Northstar Glassworks
- Trautman Art Glass
- Glass Alchemy
- Momka's Glass

This request includes internal communications with other EPA regional offices as well as the EPA headquarters. Additionally, this request includes any documents stored on Sharepoint and/or OneDrive.

REQUEST NO. 7: Produce all YOUR documents and communications from July 1, 2016 to present relating to the enforcement of 6S by YOU and/or by state environmental protection agencies against any of the companies listed in Request No. 6 above.

REQUEST NO. 8: To the extent not already produced in response to another request, produce all documents and communications relating to 6S from YOUR employee Susan Fairchild from 2006 to present. This request specifically includes emails between Fairfield and the West Virginia Department of Environmental Protection in February 2009.